

# **EXHIBIT B**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF DELAWARE  
- - -

3 RLI INSURANCE COMPANY, : CIVIL ACTION

4 Plaintiff  
5 :

6 vs.  
7 :

8 INDIAN RIVER SCHOOL  
9 DISTRICT and EDIS  
10 COMPANY and BECKER :  
11 MORGAN GROUP, INC.,

12 Defendants : NO. 05-858  
13 - - -

14 Oral deposition of THEODORE H.  
15 DWYER, JR., taken at the law offices of  
16 Seitz, Van Ogtrop & Green, P.A., 222 Delaware  
17 Avenue, Suite 1500, Wilmington, Delaware, on  
18 Wednesday, May 30, 2007, at 10:10 a.m.,  
19 before Karyn M. Geftman, a Registered  
20 Professional Reporter, an Approved Reporter  
21 of the United States District Court, pursuant  
22 to notice.

23 KARYN M. GEFTMAN & ASSOCIATES  
24 Registered Professional Reporters  
Certified Court Reporters (NJ)  
837 Margo Lane  
Penn Valley, Pennsylvania 19072  
610-608-1040 610-747-0412 fax  
karynrpr@comcast.net

Deposition of Theodore H. Dwyer, Jr., - EDiS President

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1 BY MR. SHIELDS:

2 Q. Under the terms of your contract  
3 with Indian River School District, would it  
4 be, do you believe, would it be your  
5 understanding that in order to pay somebody  
6 for a joint check they would have to have  
7 provided the service for which they are being  
8 paid or the materials for which they are  
9 being paid?

10 A. Well, in this case many of the  
11 people were not going to provide the service  
12 unless they were paid. They had the material  
13 but they weren't going to send it to the site  
14 unless they were paid. That was the case  
15 with the water treatment supplier, that was  
16 the case with Baltimore Air Coil who provided  
17 the ice storage system, that was the case  
18 with the duct work supplier. They all had  
19 this material someplace, but they knew  
20 McDaniel wasn't paying and they were not  
21 going to ship it until somebody paid them.  
22 And, so, the joint checks were issued to them  
23 in order to release this material that was  
24 necessary to open the building on time.

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1 Q. Okay. Would you go to the first  
2 continuation page. The second column B,  
3 description of the work.  
4 Do you see where I'm referring  
5 to there?

6 A. The second column B, yes.

7 Q. And it starts with mobilization and  
8 it ends with the booster pump.  
9 Are you with me so far?

10 A. Yes.

11 Q. And in column G it states that 100%  
12 of every work description item from that,  
13 from that column B has been completed. The  
14 certification on the front page states that:  
15 "In accordance with the contract documents,  
16 based upon on-site observations and the data  
17 comprising this application, the construction  
18 manager and architect certify to the owner  
19 that to the best of their knowledge,  
20 information and belief the work has  
21 progressed as indicated, the quality of the  
22 work is in accordance with the contract  
23 documents and the contractor is entitled to  
24 payment of the amount certified."

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1 Had 100% of every item on the  
2 first continuation page been supplied,  
3 installed and in conformance with the  
4 contract documents as of the date of this pay  
5 application?

6 A. No.

7 Q. Did you know that when this pay  
8 application was submitted?

9 A. Yes.

10 Q. Did Mr. McCone know that when this  
11 pay application was submitted?

12 A. Yes.

13 Q. Do you know why Mr. McCone signed  
14 the certification even though that was not,  
15 the statement was not accurate?

16 A. If you look at the cover letter on  
17 this, again, I say this again, these, this  
18 represents payment with joint checks, checks  
19 made out to McDaniel and his suppliers. Some  
20 of the line items had been previously

21 indicated at 100%. McDaniel did not pay the  
22 water treatment guy. Don't look at the front  
23 page here. Let's go to wherever the water  
24 treatment is.

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1           The water treatment shows 100%  
2 too. Well, in this case he probably had been  
3 paid because in a previous invoice we made  
4 sure he was paid. But ductwork, we knew the  
5 ductwork wasn't complete. But you can't bill  
6 out more than 100% on any particular line  
7 item; the state will not pay it. So,  
8 essentially, he took the line items that were  
9 left and spread out the invoice. But, again,  
10 these were joint checks made out to  
11 contractors who had not been paid.

12    Q. Okay. Now, this document is a  
13 certification for the payment of \$106,400,  
14 correct?

15    A. Yes.